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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,414	12/28/2000	Michael Tod Morman	KCC-15,848	7833

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/02/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/75/414

Applicant(s)

Morman et al.

Examiner

John Guarniello

Group Art Unit

1921

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-56 is/are pending in the application.
- Of the above claim(s) 1-23, 51-55 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 24-50, 56 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) #416
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Election/Restriction

15. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-23, 51-55, drawn to substantially liquid impermeable film, classified in class 428, subclass 315.
- II. Claims 24-50, 56, drawn to laminate, classified in class 442, subclass 394.

16. The inventions are distinct, each from the other because:

17. Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as housewrap and the inventions are deemed patentably distinct since there is nothing on this record to show them to be

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obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

18. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

20. During a telephone conversation with Maxwell J. Peterson on 8/26/2002 a provisional election was made without traverse to prosecute the invention of Group II, claims 24-50, 56. Affirmation of this election must be

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made by applicant in replying to this Office action. Claims 1-23, 51-55 Group I withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

21. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

22. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

23. Claim 56 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 56, line 1, it is not clear what the correct dependency is for the claim since this depends on non-elected claim 51 which is directed to the non-elected substantially liquid-impermeable breathable film, claim 56 is directed to a laminate.

Claim Rejections - 35 USC § 102

24. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-32, 41-50 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/05501.

WO'501 describes films made of polyethylenes and fillers, and articles made therefrom with a greater WVTR (water vapor transmission rate) than previously available films base on conventional Zeigler-Natta based polyethylenes, (see abstract; page 1, lines 10-16; page 2, lines 22-31).

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WO'051 describes using the high WVTR films in combination with polymeric woven and non-woven materials (corresponding to nonwoven web) for consumer articles like diapers, adult incontinence devices, feminine hygiene articles, medical and surgical gowns, medical drapes, industrial apparel and building products like housewrap and roofing components, (page 4, lines 10-27; page 5, lines 18-23), which can be laminates. WO'051 describes WVTR rates corresponding to greater than 100 g/square meter/day and greater than 3000 g/square meter/day which overlap the WVTR values of the claimed invention, (page 10, lines 1-18). WO'051 describes the films can be used in laminated structures, (page 5, lines 17-24). WO'051 describes the essential limitations of the claimed invention. Claims lack novelty.

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 24, 36-38, 41, 42-50, 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylivker et al 6,002,064 in view of WO 98/05501.

Kobylivker describes stretch thinned polymeric film from a mixture of polymer matrix with a particulate filler which can be laminated to a nonwoven web for a wide variety of medical apparel and related products, (see abstract; column 1 lines 20-43). Kobylivker describes laminates which include the stretch thinned polymeric films with one or more nonwoven webs, (column 2, lines 16-19, lines 46-54). Kobylivker describes breathable film with a WVTR of at least 300 grams/ square meter-24 hours and nonwoven webs made by meltblowing, spunbonding, and bonded card processes, (column 3, lines 45-55; column 4, lines 1-35). Kobylivker describes the polymer matrix, (column 5, lines 59-67; column 6, lines 1-44). Kobylivker describes the filler particles, (column 6, lines 50-67). Kobylivker describes the laminate, (column 8, lines 51-58). Kobylivker differs from the claimed invention because it is silent about diaper, training pant and swimwear.

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WO 98/05501 as is paragraph # 24.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the film laminate of Kobylivker for use as breathable end use applications (column 8, lines 57-58) , with the materials of WO'501 of diaper, training pant and swimwear, motivated with the expectation that lighter weight and softer film laminate resulting for these utilities can be appropriately utilized by one of ordinary skill in this art. Further uses are describes by Kobylivker for other medical apparel, (column 9, lines 56-64).

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am. to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The

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fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

September 11, 2002

September 29, 2002



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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